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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,764	01/14/2004	Per Egnelov	030481-0213	1513
23428 7590 02/23/2010 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER TYSON, MELANIE RUANO				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
02/23/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/756,764

Applicant(s)

EGNELOV ET AL.

Examiner

MELANIE TYSON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-16 and 19-32 is/are rejected.
- 7) ☒ Claim(s) 6-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to the applicant's amendment received 20 November 2009. The amendments made to the claims do not place the application in condition for allowance for the reasons set forth below. Claims 17 and 18 remain withdrawn from consideration. New claims 29-32 have been added.

Response to Arguments

Applicant's arguments with respect to claims 1-5, 10-16, and 19-32 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 13, 15, 16, and 19-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Evans et al. (U.S. Patent No. 5,681,334). Evans discloses a closure device (see entire document) comprising an insertion tool having a housing (26) and actuator (28) operable in a first mode for deployment of an inner member (for example, see Figure 9) and in a second mode for tamping an outer member (for example, see Figure 10), wherein the actuator is arranged to be set in the second mode in response to a pulling force on the filament (in that the actuator is set for tamping when the filaments are pulled taut), and a seal assembly (consisting of inner seal member 22 and

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outer locking member 50; for example, see Figure 14 or 15) operatively connected to a filament (24 A/B), wherein the actuator can be controlled or moved by the flange (34).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-5, 12, 14, and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al. in view of Kensey et al. (U.S. Patent No. 5,545,178).

Evans discloses the claimed invention except for a pusher, a slider, a sleeve, and a separate tamping tube. Kensey discloses a closure device (see entire document). Kensey teaches a pusher (40), a slider (64), a sleeve (28), and a separate tamping tube (84, in which the actuator is 74/76/78) capable of performing the functions as claimed. It is well within the general knowledge of one having ordinary skill in the art to use a known technique to improve similar devices in the same way. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was

made to incorporate a pusher, slider, sleeve, and separate tamping tube as taught by Kensey in the device of Evans. Doing so would provide the device with a tightening and holding means, and a means for protecting the device or tissue during delivery/deployment of the sealing member, thus reducing the likelihood of damage and reducing the likelihood of the sealing member inadvertently becoming loose resulting in a leak and in turn providing optimum leak prevention.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al. in view of Kensey et al. (U.S. Publication No. 2001/0003158 A1).

Evans discloses the claimed invention except for separate passageways for the seal assembly and a guiding member. Kensey discloses a closure device (see entire document). Kensey teaches a housing (28') having separate passageways (for example, see Figure 32) that converge at the distal end. It is well within the general knowledge of one having ordinary skill in the art to use a known technique to improve similar devices in the same way. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to incorporate separate passageways as taught by Kensey in the device of Evans. Doing so would provide the advantage of separate lumens, which would enable one to simultaneously utilize a guiding member, which would advantageously provide a guide for positioning the device at a surgical site, and seal assembly by reducing the possibility of entanglement or knotting between the two.

Allowable Subject Matter

Claims 6-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Akerfeldt et al. (6,425,911 B1) and Egnelov et al. (6,929,655 B2) disclose a closure device comprising a seal assembly and a tamping tube.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE TYSON whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Friday 7-7 (max flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie Tyson/
Examiner, Art Unit 3773
February 17, 2010